

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 PAUL T. HAMMERNESS  
Supervising Deputy Attorney General  
3 BRADLEY SOLOMON  
Deputy Attorney General  
4 State Bar No. 140625  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-3664  
Telephone: (415) 703-5627  
6 Fax: (415) 703-5480  
Email: bradley.solomon@doj.ca.gov  
7 Attorneys for Defendant William Lockyer

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 **RICHARD E. WILMSHURST,**

12 Plaintiff,

13 v.

14 **MARRIOTT OF SAN FRANCISCO, SAM**  
15 **SNOWDEN, IGNATIUS CHINN, WILLIAM**  
16 **LOCKYER, BLAKE GRAHAM, LEE**  
17 **CAREAGA, JOHN MARSH, and KISU YO**  
18 **AND DOES 1 THROUGH 100,**

19 Defendants.

C 07 3790 WHA

**DEFENDANTS' REPLY TO  
PLAINTIFF'S MEMORANDUM IN  
SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS  
DEFENDANT WILLIAM  
LOCKYER FROM PLAINTIFF'S  
COMPLAINT**

Date:

Time:

Courtroom: 9, 19<sup>th</sup> Floor

Judge: Honorable William  
Alsup

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21  
22 **INTRODUCTION**

23 Plaintiff acknowledges in his Opposition that the statute of limitations for a Federal Civil Rights  
24 action is two years. (Opposition, page 5.) He does not dispute that his arrest occurred more than two  
25 years prior to the filing of his claim. Clearly, plaintiff's Complaint is barred by the statute of  
26 limitations. Much of plaintiff's Opposition entails a request to amend and dismiss many of his  
27 admittedly inviable causes, but no amendment can cure the inherent defect of the entire Complaint.  
28 The claim is untimely and barred by the applicable statute of limitations.

## I.

**PLAINTIFF'S UNLAWFUL ARREST CLAIM ACCRUED ON THE DATE OF HIS ARREST THEREBY SUBJECTING HIS ENTIRE COMPLAINT TO DISMISSAL PURSUANT TO THE APPLICABLE STATUTE OF LIMITATIONS**

Plaintiff incorrectly contends that his civil rights cause for unlawful arrest accrued at the time criminal charges were allegedly dismissed. In fact, all case law, including a recent U.S. Supreme Court case, finds that a cause for unlawful arrest accrues at the time of arrest.

In California, a two-year statute applies to actions for personal injuries, no matter in what manner plaintiff alleges his cause of action; and the statute begins to run upon commission of the wrongful act, even though some or most of resulting damage does not occur until later. *Strzelczyk v. Marti* (App. 1959) 169 Cal.App.2d 703, 337 P.2d 846. In the case at hand, the alleged unlawful arrest serves as the accrual date for plaintiff's civil rights cause. *Collins v. County of Los Angeles* (1966) 241 Cal.App.2d 451, 50 Cal. Rptr. 586

In 2007, the United States Supreme Court reemphasized precedent that determines when a civil rights cause for unlawful arrest accrues:

"We hold that the statute of limitations upon a §1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process. "(*Wallace v. Kato* S.Ct. 1091, 1100 (2007).)

The *Kato* decision served to reaffirm the finding of a neighboring Circuit Court:

"We conclude that Booker's §1983 unlawful arrest claim against Owens and Lewis accrued on the day of his arrest, August 7, 1987. Because he did not bring his §1983 claim against Owens and Lewis until February 1995, the two-years Statute of limitations bars his suit." (*Booker v. Ward*, 94 F.3d 1052, 1056-57 (7<sup>th</sup> Cir. 1996).)

*Kelley v. Myler*, once again in the Seventh Circuit, came to a similar conclusion:

"Kelley's false arrest claim is time barred because it was not brought within two years of the date of her arrest. She was arrested on April 4, 1994, and did not file her complaint until September 20, 1996." (*Kelley v. Myler*, 149 F.3d 64, 645 (7<sup>th</sup> Cir. 1998).)

Once case law establishes the accrual date as the arrest day, plaintiff's cause is, by plaintiff's own admission, barred by the applicable statute.

1 **A. While There May Be Ongoing Impactful Consequences Following An Unlawful Arrest,**  
2 **The Accrual Date Remains The Day Of Arrest.**

3 The Ninth Circuit “has repeatedly held that a “mere ‘continuing impact from past violations is  
4 not actionable.’” *Id.* at 1013, citing *Grimes v. City and County of San Francisco*, 951 F.2d 236, 238-  
5 39 (9<sup>th</sup> Cir. 1991); *Williams v. Owens-Illinois, Inc.*, 665 F.2d 918, 924 (9<sup>th</sup> Cir. 1982) ((quoting  
6 *Reed v. Lockheed Aircraft Corp.*, 613 F.2d 757, 760 (9<sup>th</sup> Cir. 1980)); *Abramson v. University of*  
7 *Hawaii*, 594 F.2d 202, 209 (9<sup>th</sup> Cir. 1979) (“The proper focus is upon the time of the discriminatory  
8 acts, not upon the time at which the consequences of the acts became most painful.”).

9 **CONCLUSION**

10 While defendants have provided a myriad of contentions as to why plaintiff’s claim is inviable;  
11 most succinctly, plaintiff’s Complaint is barred by the statute of limitations. Defendants respectfully  
12 request that the Complaint be dismissed.

13 Dated: January 3, 2008

14 Respectfully submitted,

15 EDMUND G. BROWN JR.  
16 Attorney General of the State of California

17 PAUL T. HAMMERNESS  
18 Supervising Deputy Attorney General

19 /s/ *Bradley Solomon*  
20 BRADLEY SOLOMON  
21 Deputy Attorney General

22 Attorneys for Defendant William Lockyer  
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25  
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27  
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